

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
APPELLATE DIVISION

CORREY LETTSOME,)	
)	
Appellant,)	Crim. App. No. 1998-128
)	
v.)	Re: Terr. Ct. Crim. No. F345/1997
)	
GOVERNMENT OF THE VIRGIN ISLANDS,)	
)	
Appellee.)	
_____)	

—

On Appeal from the Territorial Court of the Virgin Islands

Considered: August 9, 2000
Filed: November 13, 2000

BEFORE: **RAYMOND L. FINCH**, Chief Judge of the District Court
 of the Virgin Islands; **THOMAS K. MOORE**, Judge,
 District Court of the Virgin Islands and **EDGAR D.**
 ROSS, Judge, Territorial Court, Division of St.
 Croix, Sitting by Designation.

ATTORNEYS:

Lorren D. Caffee, Esq.

A. Jeffrey Weiss & Associates
St. Thomas, VI
Attorney for Appellant,

Frederick Handleman, Solicitor General
Paula Dumas Norkaitas, Asst. Attorney General
Department of Justice
St. Thomas, VI
Attorneys for Appellee.

MEMORANDUM OPINION

PER CURIAM

Correy Lettsome ["Lettsome" or "appellant"] appeals the Judgment and Commitment order of the Territorial Court convicting him of aggravated assault and battery. The Territorial Court entered this judgment and conviction order following Lettsome's plea of guilty to the count charged. Lettsome's attorney, Lorren D. Caffee, has filed a motion to withdraw and supporting brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), in which he has advised this Court that he finds no basis for Lettsome's appeal. The Government of the Virgin Islands ["government"] has not entered an appearance in this appeal.

I. FACTUAL AND PROCEDURAL BACKGROUND

The government originally charged Lettsome with assault in the third degree in violation of V.I. CODE ANN. tit. 14, ' 297(3). The charges stemmed from Lettsome's attack on a supervisor at his place of employment. According to the complaint, Lettsome assaulted a female supervisor by hitting her in the head with his fists and kicking her while she lay on the ground. (Appendix ["App."] at 18-19.) The victim

suffered lacerations on her face and a cracked vertebrae.
(*Id.* at 38-39.) The government and Lettsome subsequently entered into a plea agreement whereby Lettsome agreed to enter a plea of guilty to the amended complaint charging the misdemeanor of aggravated assault in violation of 14 V.I.C. ' 298(5). The charge carries a maximum fine of \$500 or imprisonment for not more than one year, or both. The government agreed to recommend that Lettsome serve a sentence of probation, pay restitution, attend anger management counseling, and pay a \$300 fine.

After establishing that Lettsome knowingly and voluntarily entered into the agreement, the trial court accepted his plea to the misdemeanor count. Rejecting part of the government's sentencing recommendation, the court sentenced Lettsome to seven months incarceration but suspended four months of the sentence. The court ordered that the remaining three months of the sentence be served only on weekends with Lettsome surrendering to the Bureau of Corrections on Fridays at 6:30 p.m. and being released on Sundays at 6:30 p.m. The court imposed these terms to enable Lettsome to continue working and attending the University of the Virgin Islands. The court also imposed one year of

probation and ordered Lettsome to attend anger management counseling, write a letter of apology to the victim, pay restitution to the victim in the amount of \$4718.20, and pay court costs of \$25 and a fine of \$300. This timely appeal followed.

II. DISCUSSION

The Appellate Division has jurisdiction to review a judgment and conviction order entered in a criminal case on the appellant's plea of guilty only if the appeal raises a colorable claim of a violation of the Constitution or the laws of the United States. See *Chick v. Government of the Virgin Islands*, 941 F. Supp. 49, 50-51 (D.V.I. App. Div. 1996); *Monsanto-Swan v. Government of the Virgin Islands*, 918 F. Supp. 872, 874-75 (D.V.I. App. Div. 1996); see also 4 V.I.C. ' 33. Appellant's counsel has identified the trial court's acceptance of the plea and the sentence it subsequently imposed as being the only two feasible issues on appeal. The record supports counsel's conclusion. Neither issue presents any colorable constitutional claim to support the Court exercising jurisdiction over this appeal.

Before accepting Lettsome's plea, the trial judge went beyond what is called for in Territorial Court Rule 126 to ensure that Lettsome understood the charge against him and that he was voluntarily entering his plea of guilty. See TERR. CT. R. 126 ("In no case shall the court accept a plea of guilty without first determining if the defendant understands

the nature of the charge against him, and that the plea is voluntarily made.") The trial judge first verified that Lettsome had not taken any medication, drugs, or alcohol that would impair his faculties. (App. at 17.) The trial judge also verified that Lettsome was satisfied with his legal representation. (*Id.*) The trial judge then took great pains to review the charge pending against Lettsome, first by reading it to him and then by providing him with a written copy so that he could better follow along with the prosecutor's statements. (*Id.* at 18-22.) She then advised Lettsome of the possible sentence of a fine of not more than \$500, or imprisonment for not more than one year, or both, for the charge of aggravated assault. (*Id.* at 22.)

The trial judge continued by advising Lettsome of the government's burden if the case proceeded to trial and the rights that Lettsome, by pleading guilty, was waiving. (*Id.* at 22-23.) Significantly, the trial judge also informed Lettsome that despite the plea agreement he had entered into with the government that called only for a term of probation, the court was not bound by the government's recommendation. The trial judge told Lettsome that

it is up to me, as the Judge, to determine how you should

be sentenced. . . . what I want to stress to you and your lawyer and the Government's lawyer, they make recommendation to me as the judge, and I must decide how to sentence you. I may not accept their recommendation or I may. As long as I follow the law, I am the one who decides how you should be sentenced.

(*Id.* at 25.) Lettsome indicated that he understood the court's statement. (*Id.*) The trial judge then asked Lettsome if he "would be changing [his] plea voluntarily, meaning no one has threatened [him] in any way" to which Lettsome responded that his plea was voluntary. (*Id.* at 26.) The court concluded by again reading the charge to Lettsome and asking him if he pled, guilty or not guilty, to which Lettsome responded "I plead guilty." (*Id.* at 26-27.) This record shows that Lettsome knowingly and voluntarily entered his plea of guilty after having been advised by the court of the charge pending against him and of the rights he would be waiving by changing his plea.

The sentencing hearing similarly fails to show any error. The trial judge chose not to abide by the government's sentencing recommendation. (*Id.* at 40.) In imposing a sentence of incarceration instead of probation as recommended by the government, the court indicated that it found Lettsome's behavior to be "very aggressive" and "totally unjustifiable," for which he was not "going to get off scot free." (*Id.* at 39.) Furthermore, the court was extremely dissatisfied by Lettsome waiting until the sentencing hearing

to offer an apology to the victim who he knew would not be present instead of apologizing at earlier hearings which the victim attended. (*Id.*)

As already noted, the court had informed Lettsome that the government's recommendation was not binding and that he could be sentenced up to the statutory maximum allowed for the charge of aggravated assault. Lettsome nevertheless knowingly and voluntarily chose to plead guilty. Accordingly, there is no colorable constitutional claim on these grounds. *See Luke v. Government of the Virgin Islands*, 921 F. Supp. 302, 303 (D.V.I. App. Div. 1996).

Lettsome also cannot allege any error arising from the actual sentence imposed. The trial judge correctly imposed both incarceration and a term of probation by sentencing Lettsome to a term greater than six months, suspending all but three months, to be followed by a term of probation of one year. This complies with 5 V.I.C. ' 3711. Furthermore, the trial judge made clear in her order that the restitution Lettsome must pay to the victim shall be paid only during the period of his probation, and not during the term of his incarceration. (App. at 48 (Judgment and Commitment Order); *see also Karpouzis v. Government of the Virgin Islands*, 58 F. Supp.2d 635, 639 (D.V.I. App. Div. 1999).) This again complies to the letter with the sentencing requirements of section 3711. There are no other indications that the

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sentence

was extreme or grossly disproportionate to the crime, or any other basis for error.

III. CONCLUSION

The record does not support any colorable claim under the Constitution or the laws of the United States. Accordingly, the Court will grant appellant's counsel's motion to withdraw, and finds that it lacks jurisdiction to consider this appeal from Lettsome's plea of guilty. An appropriate order is attached.

ENTERED this 13th day of November, 2000.

ATTEST:
ORINN ARNOLD
Clerk of the Court

By: _____/s/_____
Deputy Clerk

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St. Thomas, VI

Attorney for Appellant,

Frederick Handleman, Solicitor General

Paula Dumas Norkaitas, Asst. Attorney General

Department of Justice

St. Thomas, VI

Attorneys for Appellee.

ORDER

PER CURIAM

For the reasons set forth in the accompanying memorandum of even date, it is hereby

ORDERED that the motion of appellant's counsel to withdraw, filed pursuant to *Anders v. California*, 386 U.S. 738 (1967), is **GRANTED**. Furthermore, as the Court finds that it lacks jurisdiction to consider this appeal from the judgment and conviction entered against the appellant on his plea of guilty, it is hereby

ORDERED that this appeal is **DISMISSED** for lack of jurisdiction. The Clerk shall **CLOSE** the file.

ENTERED this 13th day of November, 2000.

ATTEST:

ORINN ARNOLD

Clerk of the Court

By: _____/s/_____
Deputy Clerk

Copies to:

Judges of the Appellate Panel
Hon. Geoffrey W. Barnard
Hon. Jeffrey L. Resnick
Judges of the Territorial Court
Lorren D. Caffee, Esq.
Frederick Handleman, Solicitor General
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Mrs. Francis
St. Thomas law clerks
St. Croix law clerks
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